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May 6, 2005

Re:    **BOARD OF EDUCATION OF THE BOROUGH OF ENGLEWOOD CLIFFS,  
BERGEN COUNTY vs. BOARD OF EDUCATION OF THE CITY OF  
ENGLEWOOD, BERGEN COUNTY vs. BOARD OF EDUCATION OF THE  
BOROUGH OF TENAFLY, BERGEN COUNTY**

Dear Legal Committee:

Please accept this Letter Brief on behalf of the amici curiae the Education Law Center and New Jersey State Conference of NAACP (collectively, "amici"), in lieu of a more formal Brief in opposition to the Emergent Relief Petition of the Board of Education of the Borough of Englewood ("Englewood Board"; "Englewood"; "the District"). The Englewood Board requests emergent relief in the form of immediate funding for Englewood's "Equity and Excellence" Program for 2005-06 or, in the event funding relief is not granted, compulsory regionalization.<sup>1</sup>

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<sup>1</sup> Respecting Englewood's application for compulsory regionalization if funding is not granted, amici do not oppose the District's request.

## I. PRELIMINARY STATEMENT

Respecting funding for “Equity and Excellence,” amici take the position that the New Jersey Commissioner of Education (“Commissioner”) and the State Board of Education (“State Board”) retain the “ultimate responsibility for developing and directing” an effective integration plan for the district. Englewood Cliffs v. Englewood, 170 N.J. 323, 343 (2002) (“Englewood III”) (so holding). Nonetheless, we urge the State Board to reject the Englewood Board’s Motion for state funding of its “Equity and Excellence” program on the basis that the plan has failed to yield the racial integration mandated by the New Jersey Supreme Court. See id. The District’s “Academies @ Englewood” (“Academies”) have not in fact made significant progress towards ameliorating the racial balance in the general student body at Dwight Morrow High School (“DMHS”) or the district at large, as documented by the periodic assessments prepared by the Commissioner. According to the Commissioner, not only does the general student body at DMHS remain highly segregated three years after the establishment of the Academies, but the advent of the program has in fact exacerbated the problem of racial isolation in important respects. Report to the State Board of Education by William L. Librera, Jan. 14, 2005, attached as Appendix A to the May 6, 2005 Certification of Koren L. Bell (“Librera Report”) at 7. Amici therefore assert that the provision of any additional state funding must be conditioned on the development of a revised integration plan that will be effective in addressing the persistent racial segregation at DMHS and throughout the district.

The district’s “Equity and Excellence” plan, its “agenda for the improvement of public education in the City of Englewood,” articulates a goal

to transform and upgrade the entire public education system in Englewood so that all students’ need are met and all students have an opportunity to qualify for entrance to the Academies @ Englewood.

Equity and Excellence Plan, Feb. 2002, attached as Appendix B to the May 6, 2005 Certification of Koren L. Bell (“Equity Plan”) at 2. “Attention to the high school level alone is not enough to cause a sustainable, positive difference for all students,” the Equity Plan further explains; rather “[s]erious efforts must be directed to the years preceding high school.” *Id.* To this end, the Equity Plan sets forth a strategy based on two components: the Academies @ Englewood magnet school and the “renewal program” to improve the quality of education and student achievement in the school system as a whole.

Because it is the Academies @ Englewood prong of the approach that is designed to address racial isolation at DMHS, the viability of the district’s integration plan must rise or fall with the success of this component. For this reason, the thrust of the district’s efforts and the State’s periodic assessments has always rested squarely on the Academies @ Englewood component. *See, e.g.,* Librera Report (addressing, exclusively, the implementation of the Academies @ Englewood program).<sup>2</sup> Similarly, it is this aspect of the integration plan that concerned the State Board in its April 2, 2003 decision. *See Englewood Cliffs v. Englewood*, State Board Decision, Apr. 2, 2003 (“State Board Decision, 4/2/03”), at 9-10.

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<sup>2</sup> It is the Academies @ Englewood prong of the program that is of most concern to the Englewood Board as well. For example, respecting the “irreparable harm” the district would face if its request for relief is not granted, the Board explains:

Unfortunately, if the Academies are forced to close and the renewal program dismantled, the White and Asian students who were attracted back into the District by the new programs and overall educational renaissance will leave again. If the Academies close for even one day, it will lose all credibility as a sustainable program and it will be impossible to rejuvenate the Academies @ Englewood with any degree of success. Thus, the early successes of the program will be obliterated, as will the improved racial diversity that it sparked in the District. The Board will once again be forced to start over from ground zero. However, it will be forced to seek redress through the only other means available to achieve racial diversity – compulsory regionalization.

Englewood Brief on Behalf of the Board of Education of the City of Englewood in Support of its Motion for Emergent Relief and Temporary Restraints (“Englewood Brief”) at 9.

At the time of its April 2, 2003 decision, the State Board determined, based on its assessment of the Academies @ Englewood approach, that there “was not sufficient data. . .to draw any conclusions as to the likely effect of the Academies @ Englewood program on the racial and ethnic composition of the student body at DMHS.” State Board Decision, 4/2/03. The State Board further explained that “the action we are taking today is conditioned on the continued progress of the Academies @ Englewood in ameliorating the racial balance at DMHS.” Letter to the Boards of Englewood, Englewood Cliffs, and Tenafly from the State Board, May 14, 2003, at 3. Accordingly, the State Board required the Commissioner to present it with semi-annual reports as to the effectiveness of the Academies @ Englewood strategy for achieving progress toward integration at DMHS. Id.

On account of these semi-annual reports, important data that was not before the State Board in April 2003 is available today. This data forcefully rebuts the Englewood Board’s assertion that the Academies @ Englewood has “unequivocally. . .achiev[ed] its intended effect,” Englewood Brief at 8, and militates against the State Board granting additional funds to the district without conditioning the provision of these funds on the development of a revised integration plan.

## **II. STATEMENT OF FACTS**

In the most recent Report, the Commissioner demonstrates that, although Englewood continues to articulate the goals set forth in the plan for “Equity and Excellence,” see Librera Report at 5, the Academies @ Englewood have not in fact made significant progress towards ameliorating the racial balance in the general student body at DMHS and in the district at large, and have even worked to make the problem of racial segregation worse in important respects. See id. at 7.

The central problem with the district's current approach, the Commissioner finds, is the constitution of the Academies @ Englewood and DMHS as two separate entities. See Librera Report at 5-6. Indeed, the district itself has described the Academy program as “a school within a school.” See Equity Plan at 25; see also April 15, 2005 Certification of Carol A. Lisa for the Englewood Board (“Lisa Cert.”), para. 9 (“From its inception, it was accepted that the Program would create two distinct educational opportunities within Dwight Morrow High School. One opportunity was to attend the Academies @ Englewood and the other was to attend the Comprehensive High School. They were to remain two distinct “schools within a school” until such time as the Academies were securely established, and only then were students from both schools to be provided opportunities to unite.”). Students from the Academies follow a separate academic program from DMHS, use separate facilities, and operate on separate class and elective schedules. “This approach in and of itself identifies the Academies students as ‘haves’ and the Dwight Morrow students as ‘have nots,’” the Commissioner explains. Librera Report at 6. Indeed, not only has the separate structure of the schools helped to foster “a fundamental barrier to the integration of students at the Academies and Dwight Morrow High School,” id.; even worse, the advent of the “school within a school” has created a new “pattern of segregation within Dwight Morrow which may lead to even more serious problems than those that existed before the implementation of the Academies program.” Id. at 7 (emphasis added).

According to the Commissioner, it is the separate structure of the two schools that has insured that the Academies @ Englewood have not been effective in integrating the student body at DMHS. The Commissioner reports:

While the admission of students from outside the district through the school choice program has resulted in a well-integrated student body within the Academies @ Englewood program

(see Tables A through D), the population of Dwight Morrow High School continues to belong overwhelmingly to minority groups. Progress toward integrating either the Academies @ Englewood and Dwight Morrow programs or the Academies @ Englewood and Dwight Morrow student bodies continues to move slowly.

Librera Report at 3. Based on the Commissioner’s data, today - three years after the establishment of the Academies program - the general student body at the approximately 898-pupil High School remains approximately 97% Black and Hispanic (46% and 51%, respectively), but only 1% White and 2% Asian<sup>3</sup> - and this even though Englewood’s population is fairly evenly divided among Whites, Blacks, and Hispanics. See Librera Report, Data Tables D; E. In contrast, the population of the 311 students at the separate Academies is approximately 25% Black; 25% Hispanic; 21% White; 28% Asian; and 2% Other. Id. Table D. Accordingly, when students from the “school within a school” are factored into the count for the general population of the High School to yield a total student population of about 1209 pupils, the figures on racial balance that emerge are slightly better – approximately 41% Black; 44% Hispanic; 6% White; 8% Asian; and .4% Other – although nevertheless disproportionately minority. Id. Table E.

Even with respect to the “well-balanced” “school within a school,” however, the Commissioner expresses significant concern. “Few students from Englewood’s middle school appear to qualify for admission” to the Academies in the first place: of the total current enrollment in grades 9 – 11,<sup>4</sup> 126 (41%) students are from Englewood while 185 (59%) are out-of-district pupils. Librera Report at 3; see id. Data Table D. Moreover, with each successive year, the numbers of resident

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<sup>3</sup> The demographic breakdown for DMHS, not including the Academies, has been calculated by subtracting, by race, the number of Academies students in Table D from the number of total DMHS students and Academies students in Table E, and then computing percentages for each of these four new raw totals. See Report, Data Tables D, E. Unless otherwise indicated, percent figures throughout this Brief have been rounded to the nearest whole number.

<sup>4</sup> Since 2002, a Ninth Grade class has been added each year so that, this year, there are Academies students in grades 9, 10, and 11.

students who have gained admission continued to decline: Englewood pupils make up about 49% of the 11<sup>th</sup> grade class; 38% of the 10<sup>th</sup> grade class; and 36% of the 9<sup>th</sup> grade class. See Librera Report, Data Tables A; B; C. Of the students enrolled, a disproportionate number of resident pupils, though small, have left the program; with respect to these students, the Commissioner expresses concern about those who have been “academically exited” and others who elected to return to Dwight Morrow High School. Librera Report at 4. Not surprisingly, with declining resident enrollment come fewer Black and Hispanic students who attend the Academies: of the 126 Englewood pupils enrolled in grades 9-11, about 51% are Black; 31% are Hispanic; 3% are White; 7% are Asian; and 2% are Other; in contrast, of the 185 out-of-district students enrolled, about 7% are Black; 17% are Hispanic; 33% are White; 42% are Asian; and 2% are Other. See id., Data Table D.

### **III. ENGLEWOOD’S CHARACTERIZATION IS ERRONEOUS; THE ACADEMIES HAVE NOT CONTRIBUTED TO IMPROVING INTEGRATION IN THE DISTRICT**

Viewed in light of the data and analysis contained in the Commissioner’s Report, the Englewood Board’s assertion that the Academies program “has begun to show a marked improvement in the racial composition of Dwight Morrow High School and has worked to close the gross disparity between the number of minority and non-minority students” is exposed as a highly selective interpretation of the facts, at best. See Englewood Brief at 8. This interpretation stems from the district’s failure – in the context of the instant Motion – to distinguish between the progress towards integration that has occurred within what they plainly admit remains a “school within a school,” see e.g. Lisa Cert., para. 9, and the persistent racial isolation of the 97% minority student body at the separate DMHS.

The Englewood Board asserts, for example, that “[p]rior to implementation of the Program, 1% of the High School’s population were White and 3.3% were Asian,” Englewood Brief at 8. Of course, according to the data contained in the Commissioner’s Report, these numbers are actually slightly better, in terms of racial balance, than the current composition of the general student body at the High School, three years after the advent of the program.<sup>5</sup> Nevertheless, without any substantive elaboration, Englewood declares that the return of White and Asian students to the district has somehow “trickled-down” into DMHS, see id., and further asserts that, “[c]urrently, White students comprise 8.6% of the student body and Asians comprise 11.4%. . .Dwight Morrow has increased its percentage of non-minority students by 20%,” id. at 9. These figures do not square with the Commissioner’s data - which yields, at most, a 6.37% White and 8.44% Asian population when figures for the Academies are consolidated with those for DMHS, see Librera Report, Data Table E. Moreover, the district appears to have merely added their figures (8.6% and 11.4%) to yield a net 20% increase without subtracting the 1% and 3.3% figures for the White and Asian students that the district admits attended the school prior to the advent of the Academies program. In this light, the reported net 20% increase is almost certainly erroneous; at best, the figure is misleading because it is predicated on the fiction of a single unified Dwight Morrow that not even the district maintains exists.

Other aspects of the district’s discussion of the Academies Program’s “unequivocal[.]” achievement of its “intended effect,” Englewood Brief at 8, are similarly misleading. For example, Englewood asserts that “the number of White students enrolled in the Academies has nearly doubled

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<sup>5</sup> As explained supra note 2 and accompanying text, when the numbers of Academies students are subtracted from the Commissioner’s figures on total enrollment for DMHS and the Academies and percents calculated for DMHS alone, the percent yield of White and Asian students in the composite student body is approximately 1% and 2%, respectively, as compared to the 1% and 3.3% cited by the district.

between the inaugural year (2002) and today;” what the district neglects to explain is that, since 2002, when the Academies began with a single Ninth Grade class, a Ninth Grade class has been added each subsequent year so that, this year, there are Academies students in grades 9, 10, and 11. Accordingly, since two entire classes were added since the inaugural year, it makes sense that the White population would have at least doubled.

Similarly misleading is the district’s assertion, respecting the erroneous claim of a 20% increase in non-minority students, that “it is equally anticipated that this trend will continue to increase” - an assertion that masks the significance of the Commissioner’s finding that even as “the number of students accepted through the school choice program is close to the numbers in the Academies program as originally conceived, the number of resident students accepted into the Academies remains low and each year constitutes yet a smaller proportion of the Academies student body.” *Librera Report* at 2. In other words, even if the numbers of White and Asian students – who predominantly come from outside the district – continue to rise in line with the district’s projections, the decreasing enrollment of resident, primarily Black and Hispanic, students indicates that even the early gains in integration within the Academies are not a “trend” that can be “equally anticipated to continue to increase.” The ultimate effectiveness of the Academies approach is measured not by the net numbers of White and Asian students drawn to the school through the Choice program, but rather by the integrative effect of the magnet program on the student body at DMHS. Accordingly, read in the context of the Commissioner’s Report, the district’s assertion is in fact at best a projection that White and Asian students may come to constitute an even more disproportionate share of the population at the Academies if current trends continue – hardly a testament to the success of the program, especially as the racial balance of the general student body remains stagnant.

In sum, in stark contrast to Englewood’s assertions, the Commissioner’s data reveals that, in its current form, the Academies @ Englewood approach is far from “unequivocally. . .achieving its intended effect.” See Englewood Brief at 8.

#### **IV. THE STATE BOARD MUST DIRECT ENGLEWOOD TO UNDERTAKE SPECIFIC MEASURES TO INSURE INTEGRATION IN ENGLEWOOD**

In concluding the Report, the Commissioner proposes a host of sweeping changes to address myriad concerns with the Academies approach – “primary” among them, “the slow progress of the Academies @ Englewood program toward effecting positive changes in the long-standing segregation at Dwight Morrow High School specifically, and in the district in general.” Librera Report at 5.

For example, in response to “absolutely new” “patterns of segregation in Dwight Morrow” that have emerged since the advent of the Academies, the Commissioner explains that

The department’s next step is to work more assertively with the district to extend first to all the resident students enrolled in Dwight Morrow High School, and then to the resident students in the district’s middle and elementary schools, the desegregation benefits accrued to the district’s resident students participating in the Academies @ Englewood program.

Librera Report at 7 (emphasis added). “An over-arching approach,” the Commissioner further proposes,

Might be to open the Academies program to all resident students of the Englewood school district as early as the fall of 2005 or as late as the fall of 2006. This might require the implementation of additional Academies at Dwight Morrow High School and would require a legislative override of the requirement in the Interdistrict Public School Choice Program that a choice district cannot require more of out-of-district students than it requires of in-district students for admission to a school choice program. . .Ultimately, such a program must take form down in the middle school and have roots that extend into the elementary schools.

Id. (emphasis added).

Beyond the substantial proposed changes to the current scheme, the Commissioner further pledges to “continue to work closely with the Englewood. . .District to explore this and other potential plans for continuing to address the segregation issues remaining in the district.” Librera Report at 8 (emphasis added). Underscoring the point that the Academies approach might not in fact be the most viable approach to fulfilling the Supreme Court’s mandate in Englewood, the Commissioner concludes:

Our commitment to provide better educational opportunities for all of Englewood’s resident students requires that we continue to develop and implement additional innovative programs to address the long-standing problems of this district.

Id. at 8 (first emphasis in original; second emphasis added).

Amici agree whole-heartedly with the proposition that structural transformation of the existing Academies approach - in addition to serious inquiry into, and consideration of, other potential integration plans - is necessary to address the persistent racial isolation of the approximately 900 students that attend DMHS, as well as the numerous others in the elementary and middle schools in the district at large. Amici assert that swift action in this respect is required to adequately respond to the Supreme Court’s mandate in Englewood III, charging the Commissioner and the State Board with the ultimate responsibility for redressing racial imbalance at DMHS, see 170 N.J. at 343; that changes must begin to occur before the beginning of the new school year; and, accordingly, that the provision of further funding to the district must be conditioned on transformation of the current plan.

In so concluding, we are reminded that, since the Board last ruled in this matter, the New Jersey Supreme Court issued its most powerful statement yet of the intrinsic value of diversity for all children alike in the public schools, as well as its most stinging reprise of the lack of progress the State has made in giving practical expression to this proud principle - all in a case that, like the instant one, arose out of one district's effort to withdraw from a sending-receiving relationship. See In Re Petition for the Authorization to Conduct a Referendum on the Withdrawal of North Haledon School District from the Passaic Cty. Manchester Regional High School District, 181 N.J. 161 (2004). Invoking Englewood I, 257 N.J. Super. 413 (App. Div. 1992), and Gary Orfield & Chungmei Lee's 2004 Anniversary Report "Brown at 50: King's Dream or Plessy's Nightmare," the New Jersey Supreme Court wrote:

We know that racial balance and education are not "isolated factors," but "different sides of the same coin," [citations omitted] and that white students relegated to homogenous schools also are disadvantaged because they too are denied the opportunity for "social and educational development in an atmosphere in which children with differences learn to celebrate and not fear them." [citations omitted]

Id. at 178. Nevertheless, the Court lamented,

New Jersey ranks fifth in the nation in the percentage of black students attending ninety to one hundred percent minority schools, and fourth in the nation in respect of Hispanic students. [citation omitted]. . . We have paid lip service to the idea of diversity in our schools, but in the real world we have not succeeded.

Id. at 179.

Three years into the implementation of the district's current integration plan, the Dwight Morrow High School still helps to account for New Jersey's priority ranking on the list of most segregated states. In light of the State Board's and the Commissioner's strong articulated commitment to insuring that the problem is rectified in fact, amici believe that Englewood holds the

potential to overcome New Jersey’s legacy of “lip service to the idea of diversity” and to instead achieve success in the “real world.”

## **CONCLUSION**

For the reasons stated above, amici respectfully request that the State Board condition the provision of future state funding to Englewood on the development of a revised integration plan that will be effective in addressing the persistent racial isolation of the student body at DMHS and in the district at large.

Respectfully submitted,

Koren L. Bell, appearing pursuant to R. 1:21-3(b).

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